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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309 (j) )  
the Communications Act )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

Reply Comments of Radiofone, Inc.

Radiofone, Inc. ("Radiofone"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Rules and Paragraph No. 179 of the Commission's Notice of Proposed Rule Making, FCC 93-455, released October 12, 1993 ("NPRM"), hereby replies to the "Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Notice of Proposed Rulemaking" ("SBA Comments"), insofar as they address the definition of the term "small business" in the context of the award of 2 GHz band Personal Communications Services ("PCS") licenses by competitive bidding under Section 309(j) of the Communications Act of 1934, as amended. In support hereof, the following is shown:

1. Radiofone and its principals operate a regional network of five nonwireline cellular systems in southeast Louisiana, as well as stand-alone nonwireline cellular systems in the Michigan 5 - Manistee and Washington 3 - Ferry RSAs -

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- a total of seven systems in all.<sup>1</sup> By the standards of the existing cellular industry and by any rational contemplation of the standards of the newly-emerging PCS industry, Radiofone is a small business. Radiofone intends to apply for 2 GHz band PCS licenses.

2. In the NPRM, the Commission solicited comment on whether to rely upon a definition of the term "small business" developed by the Small Business Administration ("SBA"), a definition which generally looks at whether the company's net worth exceeds \$6 million with average net income after federal income taxes for the two preceding years not in excess of \$2 million.<sup>2</sup> The Commission questioned whether this "existing net worth/income size standard is too low for telecommunications industries, such as PCS, that may be capital intensive,"<sup>3</sup> thus indicating that it has not

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<sup>1</sup> Radiofone is a cellular licensee in the New Orleans, Louisiana MSA and in the Louisiana 8 - St. James, Louisiana 9 - Plaquemines, Michigan 5 - Manistee and Washington 3 - Ferry RSAs. A Radiofone subsidiary has a controlling interest in Houma/Thibodaux Cellular Partnership, the nonwireline cellular carrier serving the Houma-Thibodaux, Louisiana MSA. Radiofone's principals, James D. and Lawrence D. Garvey, have a controlling interest in Baton Rouge Cellular Telephone Company, the nonwireline cellular carrier serving the Baton Rouge, Louisiana MSA.

<sup>2</sup> NPRM, Para. 77.

<sup>3</sup> NPRM, footnote 51.

specifically endorsed this SBA definition.<sup>4</sup>

3. In its comments, the SBA correctly states that this "net worth test will not include businesses of sufficient size to survive, much less succeed, in the competitive wireless communication marketplace;" and suggests that "a more appropriate test is one based on revenue" (SBA Comments, pp. 8-9).<sup>5</sup> The standard proposed by the SBA Comments would define a small business as "one that, together with its affiliates, has revenues of less than \$40 million;"<sup>6</sup> but the SBA acknowledges that "the Commission ... may determine that an even larger figure is the most apt small business demarcation" (SBA Comments, pg. 11).

4. Radiofone agrees with the SBA's position that the net worth test is an inappropriate standard to define the term "small business;" but disagrees with the suggestion that the

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<sup>4</sup> Under SBA regulations, a business may also qualify as a small business if it does not exceed the size standard for the industrial classification for the business in which it is primarily engaged (SBA Comments, pg. 8). These size standards are based either on revenue or the number of employees. For businesses involved in the provision of telecommunications services, the definition of a small business is one with less than 1,500 employees. (SBA Comments, pg. 8 n. 13).

<sup>5</sup> The SBA notes that, under recent amendments to the Small Business Act, Congress has "required that any agency wishing to promulgate a size standard different from the one used by the SBA for small businesses involved in the delivery of services must base that standard on revenue" (SBA Comments, pg. 9).

<sup>6</sup> SBA Comments, pg. 10.

benchmark should be set as low as \$40 million in annual revenues.

5. As noted above, Radiofone and its principals operate a total of seven cellular systems. In the context of the cellular industry (which is characterized by large regional carriers such as McCaw Cellular Communications, Inc., GTE Mobilnet Incorporated, the Regional Bell Companies and U.S. Sprint) and given the capital intensive nature of the cellular business, Radiofone is a small business under any rational definition of the term. In proposing the \$40 million annual revenues benchmark, the SBA Comments fail to consider that cellular carriers who are also PCS licensees will be simultaneously engaged in two extremely capital intensive businesses. Because of marketplace necessity, cellular carriers must continue to expend large sums of money to expand and develop their systems. These expenditures generally fall into two categories: a) those needed to expand geographic breadth of coverage; and b) those needed for expansion of system capacity through channel additions and cell sectorization at existing cell sites, and through the construction of new cells to implement cell splitting.

6. If anything, the capital requirements of PCS systems will be even more intensive than those of cellular systems. With respect to the award of small business preferences on 2

GHz band PCS channel blocks C (consisting of 20 MHz of spectrum) and D (consisting of 10 MHz of spectrum), the associated systems will be licensed on a Basic Trading Area ("BTA") basis.<sup>7</sup> The BTA-based market definition standard produces service areas that are considerably larger than the MSA/RSA-based market definitions used in cellular. In addition, PCS systems will operate at considerably lower power levels than cellular systems;<sup>8</sup> and the stringent minimum coverage standards for PCS will require PCS operators to serve 90% of the population of their markets within 10 years of being awarded a license. These standards collectively demonstrate that 2 GHz band PCS will require a large number of base station locations to provide service, which translates into extremely high construction costs.

7. In view of these considerations, Radiofone requests that the term "small business" be defined as one that,

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<sup>7</sup> The Commission's Rules for 2 GHz band PCS were adopted in the Second Report and Order (GEN Docket No. 90-314), FCC 93-451, released October 22, 1993.

<sup>8</sup> The antenna height-power limit for 2 GHz band PCS is 100 watts EIRP at 300 meters. The power limit for mobile units has been set at 2 watts.

together with its affiliates, has revenues of less than \$81.5 million.

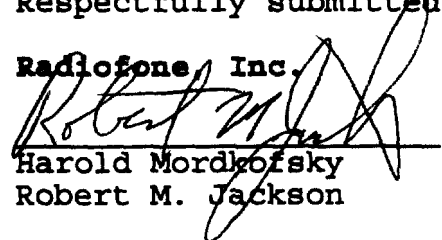
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Dated: November 23, 1993

Respectfully submitted,

Radiofone, Inc.

By:

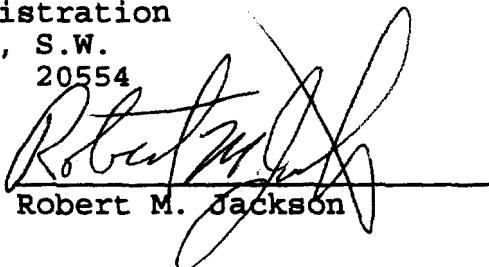
  
Harold Mordkofsky  
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Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Jackson & Dickens, and that on this 23rd day of November, 1993, I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing "Reply Comments of Radiofone, Inc." to the following:

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